

Senate File 2167

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SENATE FILE 2167

AN ACT

RELATING TO THE IOWA PROBATE CODE, INCLUDING PROVISIONS
RELATING TO ESTATE RECOVERY OF MEDICAL ASSISTANCE BENEFITS,
THE POWER TO DISCLAIM PROPERTY INTERESTS, AND TRUSTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 249A.3, subsection 11, paragraph c,
Code Supplement 2003, is amended to read as follows:

c. A disclaimer of any property, interest, or right
pursuant to section ~~633.704~~ 633.704E constitutes a transfer of
assets for the purpose of determining eligibility for medical
assistance in an amount equal to the value of the property,
interest, or right disclaimed.

Sec. 2. Section 633.356, subsection 1, unnumbered
paragraph 1, Code 2003, is amended to read as follows:

When the gross value of the decedent's personal property
does not exceed twenty-five thousand dollars and there is no
real property or the real property passes to persons exempt
from inheritance tax pursuant to section 450.9 as joint
tenants with right of survivorship, and if forty days have
elapsed since the death of the decedent, the successor of the
decedent as defined in subsection 2 may, by filing an
affidavit prepared pursuant to subsection 3 or 8, and without
procuring letters of appointment, do any of the following with
respect to one or more particular items of personal property:

Sec. 3. Section 633.356, subsection 3, paragraph a, Code
2003, is amended to read as follows:

a. The decedent's name, social security number, and the
date and place of the decedent's death.

Sec. 4. Section 633.356, subsection 4, unnumbered
paragraph 3, Code 2003, is amended to read as follows:

Judgments rendered by any court in this state and mortgages
belonging to a decedent whose personal property is being
distributed pursuant to this section may, without prior order
of court, be released, discharged, or assigned, in whole or in
part, as to any particular property, and deeds may be executed
in performance of real estate contracts entered into by the
decedent, where an affidavit made pursuant to subsection 3 or
8 is filed in the office of the county recorder of the county
wherein any judgment, mortgage, or real estate contract
appears of record.

Sec. 5. Section 633.356, subsection 7, unnumbered
paragraph 1, Code 2003, is amended to read as follows:

If the requirements of this section are satisfied, receipt
by the holder of the decedent's property of the affidavit
under subsection 3 or 8 constitutes sufficient acquittance for
the payment of money, delivery of property, or transferring
the registered ownership of property pursuant to this chapter
and discharges the holder from any further liability with
respect to the money or property. The holder may rely in good
faith on the statements in the affidavit and has no duty to
inquire into the truth of any statement in the affidavit.

Sec. 6. Section 633.356, subsection 8, Code 2003, is
amended to read as follows:

8. a. When a deceased distributee is entitled to money or
property claimed in an affidavit presented under this section
with respect to a deceased person whose estate is being
administered in this state, the personal representative of the
person whose estate is being administered shall present the
affidavit to the court in which the estate is being
administered. The court shall direct the personal
representative to pay the money or deliver the property to the
person identified by the affidavit as the successor of the
deceased distributee to the extent that the court determines
that the deceased distributee was entitled to the money or
property under the will or the laws of intestate succession.

b. When the department of human services is entitled to
money or property of a decedent pursuant to section 249A.5,
subsection 2, and no affidavit has been presented by a
successor of the decedent as defined in subsection 2, within
ninety days of the date of the decedent's death, the funds in
the account, up to the amount of the claim of the department,

3 6 shall be paid to the department upon presentation by the
3 7 department or an entity designated by the department of an
3 8 affidavit to the holder of the decedent's property. Such
3 9 affidavit shall include the information specified in
3 10 subsection 3, except that the department may submit proof of
3 11 payment of funeral expenses as verification of the decedent's
3 12 death instead of a certified copy of the decedent's death
3 13 certificate. The amount of the department's claim shall also
3 14 be included in the affidavit, which shall entitle the
3 15 department to receive the funds as a successor of the
3 16 decedent. The department shall issue a refund within sixty
3 17 days to any claimant with a superior priority pursuant to
3 18 section 633.425, if notice of such claim is given to the
3 19 department, or to the entity designated by the department to
3 20 receive notice, within one year of the department's receipt of
3 21 funds.

3 22 Sec. 7. Section 633.647, subsection 7, Code 2003, is
3 23 amended to read as follows:

3 24 7. To exercise the right to disclaim on behalf of the ward
3 25 as provided in section ~~633.704~~ 633.704E.

3 26 Sec. 8. NEW SECTION. 633.704A SHORT TITLE.

3 27 This division shall be known and may be cited as the "Iowa
3 28 Uniform Disclaimer of Property Interest Act".

3 29 Sec. 9. NEW SECTION. 633.704B DEFINITIONS.

3 30 For purposes of this division, the following definitions
3 31 shall apply:

3 32 1. "Disclaimant" means the person to whom a disclaimed
3 33 interest or power would have passed had the disclaimer not
3 34 been made.

3 35 2. "Disclaimed interest" means the interest the
4 1 disclaimant refuses to accept that would have passed to the
4 2 disclaimant had the disclaimer not been made.

4 3 3. "Disclaimer" means the refusal to accept an interest in
4 4 or power over property.

4 5 4. "Fiduciary" means a personal representative, trustee,
4 6 agent acting under a power of attorney, or other person
4 7 authorized to act as a fiduciary with respect to the property
4 8 of another person.

4 9 5. "Jointly held property" means property held in the name
4 10 of two or more persons under an arrangement in which all
4 11 holders have concurrent interests and under which the last
4 12 surviving holder is entitled to the whole of the property.

4 13 6. "Person" means an individual; corporation; business
4 14 trust; estate; trust; partnership; limited liability company;
4 15 association; joint venture; government; governmental
4 16 subdivision, agency, or instrumentality; public corporation;
4 17 or any other legal or commercial entity.

4 18 7. "State" means a state of the United States, the
4 19 District of Columbia, the Commonwealth of Puerto Rico, the
4 20 United States Virgin Islands, or any territory or insular
4 21 possession subject to the jurisdiction of the United States.
4 22 The term includes any Indian tribe or band, or Alaskan
4 23 village, recognized by federal law or formally acknowledged by
4 24 a state.

4 25 8. "Trust" means any of the following:

4 26 a. An express trust, charitable or noncharitable, with
4 27 additions thereto, whenever and however created.

4 28 b. A trust created pursuant to a statute, judgment, or
4 29 decree which requires the trust to be administered in the
4 30 manner of an express trust.

4 31 Sec. 10. NEW SECTION. 633.704C SCOPE.

4 32 This division applies to disclaimers of any interest in or
4 33 power over property, whenever and however created.

4 34 Sec. 11. NEW SECTION. 633.704D TAX QUALIFIED DISCLAIMER.

4 35 Notwithstanding any other provision of this division, any
5 1 disclaimer or transfer that meets the requirements of section
5 2 2518 of the Internal Revenue Code, as now or hereafter
5 3 amended, or any successor statute thereto, and the regulations
5 4 promulgated thereunder, for the purpose of being a tax
5 5 qualified disclaimer with the effect that the disclaimed or
5 6 transferred interest is treated as never having been
5 7 transferred to the disclaimant is effective as a disclaimer
5 8 under this division.

5 9 Sec. 12. NEW SECTION. 633.704E POWER TO DISCLAIM ==
5 10 GENERAL REQUIREMENTS == WHEN IRREVOCABLE.

5 11 1. A person may disclaim, in whole or in part, any
5 12 interest in or power over property, including a power of
5 13 appointment, whenever and however acquired. A person may
5 14 disclaim the interest or power even if its creator imposed a
5 15 spendthrift provision or similar restriction on transfer or a
5 16 restriction or limitation on the right to disclaim.

5 17 2. Except to the extent a fiduciary's right to disclaim is
5 18 expressly restricted or limited by another statute of this
5 19 state or by the instrument creating the fiduciary
5 20 relationship, or a disclaimer by a fiduciary would be a breach
5 21 of trust, a fiduciary may disclaim, in whole or in part, any
5 22 interest in or power over property, including a power of
5 23 appointment, whether acting in a personal or representative
5 24 capacity. A fiduciary may disclaim the interest or power even
5 25 if the creator imposed a spendthrift provision or similar
5 26 restriction on transfer or a restriction or limitation on the
5 27 right to disclaim, or an instrument other than the instrument
5 28 that created the fiduciary relationship imposed a restriction
5 29 or limitation on the right to disclaim.

5 30 3. To be effective, a disclaimer must be in writing or
5 31 other record, declare the disclaimer, describe the interest or
5 32 power disclaimed, be signed by the person making the
5 33 disclaimer, and be delivered or filed in the manner provided
5 34 in section 633.704L. In this subsection, "record" means
5 35 information that is inscribed on a tangible medium or that is
6 1 stored in an electronic or other medium and is retrievable in
6 2 perceivable form.

6 3 4. A partial disclaimer may be expressed as a fraction,
6 4 percentage, monetary amount, term of years, limitation of a
6 5 power, or any other interest or estate in the property.

6 6 5. A disclaimer becomes irrevocable when it is delivered
6 7 or filed pursuant to section 633.704L or when it becomes
6 8 effective as provided in sections 633.704F through 633.704K,
6 9 whichever occurs later.

6 10 6. A disclaimer made under this division is not a
6 11 transfer, assignment, or release.

6 12 Sec. 13. NEW SECTION. 633.704F EFFECT OF DISCLAIMER OF
6 13 INTEREST IN PROPERTY.

6 14 1. As used in this section:

6 15 a. "Future interest" means an interest that takes effect
6 16 in possession or enjoyment, if at all, later than the time of
6 17 its creation.

6 18 b. "Time of distribution" means the time when a disclaimed
6 19 interest would have taken effect in possession or enjoyment.

6 20 2. Except for a disclaimer governed by section 633.704G or
6 21 633.704H, the following rules apply to a disclaimer of an
6 22 interest in property:

6 23 a. The disclaimer takes effect as of the time the
6 24 instrument creating the interest becomes irrevocable, or, if
6 25 the interest arose under the law of intestate succession, as
6 26 of the time of the intestate's death.

6 27 b. The disclaimed interest passes according to any
6 28 provision in the instrument creating the interest providing
6 29 for the disposition of the interest, should it be disclaimed,
6 30 or of disclaimed interests in general.

6 31 c. If the instrument does not contain a provision
6 32 described in paragraph "b", the following rules shall apply:

6 33 (1) If the disclaimant is an individual, the disclaimed
6 34 interest passes as if the disclaimant had died immediately
6 35 before the time of distribution.

7 1 (2) If the disclaimant is not an individual, the
7 2 disclaimed interest passes as if the disclaimant did not
7 3 exist.

7 4 d. Upon the disclaimer of a preceding interest, a future
7 5 interest held by a person other than the disclaimant takes
7 6 effect as if the disclaimant had died or ceased to exist
7 7 immediately before the time of distribution, but a future
7 8 interest held by the disclaimant of the preceding interest is
7 9 not accelerated in possession or enjoyment.

7 10 e. For purposes of this section, if an individual
7 11 disclaims a future interest not held in trust, the disclaimed
7 12 future interest passes as if that interest had been held in
7 13 trust.

7 14 Sec. 14. NEW SECTION. 633.704G DISCLAIMER OF RIGHTS OF
7 15 SURVIVORSHIP IN JOINTLY HELD PROPERTY.

7 16 1. Upon the death of a holder of jointly held property, a
7 17 surviving holder may disclaim, in whole or part, the greater
7 18 of the following:

7 19 a. A fractional share of the property determined by
7 20 dividing the number one by the number of joint holders alive
7 21 immediately before the death of the holder to whose death the
7 22 disclaimer relates.

7 23 b. All of the property, except that part of the value of
7 24 the entire interest attributable to the contribution furnished
7 25 by the disclaimant.

7 26 2. A disclaimer under subsection 1 takes effect as of the
7 27 death of the holder of jointly held property to whose death

7 28 the disclaimer relates.

7 29 3. An interest in jointly held property disclaimed by a
7 30 surviving holder of the property passes as if the disclaimant
7 31 predeceased the holder to whose death the disclaimer relates.

7 32 Sec. 15. NEW SECTION. 633.704H DISCLAIMER OF INTEREST BY
7 33 TRUSTEE.

7 34 If a trustee disclaims an interest in property that
7 35 otherwise would have become trust property, the interest does
8 1 not become trust property.

8 2 Sec. 16. NEW SECTION. 633.704I DISCLAIMER OF POWER OF
8 3 APPOINTMENT OR OTHER POWER NOT HELD IN FIDUCIARY CAPACITY.

8 4 If a holder disclaims a power of appointment or other power
8 5 not held in a fiduciary capacity, the following rules shall
8 6 apply:

8 7 1. If the holder has not exercised the power, the
8 8 disclaimer takes effect as of the time the instrument creating
8 9 the power becomes irrevocable.

8 10 2. If the holder has exercised the power and the
8 11 disclaimer is of a power other than a presently exercisable
8 12 general power of appointment, the disclaimer takes effect
8 13 immediately after the last exercise of the power.

8 14 3. The instrument creating the power is construed as if
8 15 the power expired when the disclaimer became effective.

8 16 Sec. 17. NEW SECTION. 633.704J DISCLAIMER BY APPOINTEE,
8 17 OBJECT, OR TAKER IN DEFAULT OF EXERCISE OF POWER OF
8 18 APPOINTMENT.

8 19 1. For purposes of this section, all of the following
8 20 rules shall apply:

8 21 a. An appointee is a person to whom a holder of a power
8 22 has effectively appointed the property subject to the power.

8 23 b. An object of a power is a person to whom a holder of a
8 24 power may appoint the property subject to the power sometime
8 25 in the future.

8 26 c. A taker in default of the exercise of a power of
8 27 appointment is a person designated by the person creating the
8 28 power in the holder to take the property subject to the power
8 29 if the power has not been effectively exercised.

8 30 2. A disclaimer of an interest in property by an appointee
8 31 of a power of appointment takes effect as of the time the
8 32 instrument by which the holder exercises the power becomes
8 33 irrevocable.

8 34 3. A disclaimer of an interest in property by an object or
8 35 taker in default of an exercise of a power of appointment
9 1 takes effect as of the time the instrument creating the power
9 2 becomes irrevocable.

9 3 Sec. 18. NEW SECTION. 633.704K DISCLAIMER OF POWER HELD
9 4 IN FIDUCIARY CAPACITY.

9 5 1. If a fiduciary disclaims a power held in a fiduciary
9 6 capacity which has not been exercised, the disclaimer takes
9 7 effect as of the time the instrument creating the power
9 8 becomes irrevocable.

9 9 2. If a fiduciary disclaims a power held in a fiduciary
9 10 capacity which has been exercised, the disclaimer takes effect
9 11 immediately after the last exercise of the power.

9 12 3. A disclaimer under this section is effective as to
9 13 another fiduciary if the disclaimer so provides and the
9 14 fiduciary disclaiming has the authority to bind the estate,
9 15 trust, or other person for whom the fiduciary is acting.

9 16 Sec. 19. NEW SECTION. 633.704L DELIVERY OR FILING.

9 17 1. For the purposes of this section, "beneficiary
9 18 designation" means an instrument, other than an instrument
9 19 creating a trust, naming the beneficiary of any of the
9 20 following:

9 21 a. An annuity or insurance policy.

9 22 b. An account with a designation for payment on death.

9 23 c. A security registered in beneficiary form.

9 24 d. A pension, profit-sharing, retirement, or other
9 25 employment-related benefit plan.

9 26 e. Any other nonprobate transfer at death.

9 27 2. Subject to subsections 3 through 12, delivery of a
9 28 disclaimer may be effected by personal delivery, first-class
9 29 mail, or any other method likely to result in its receipt.

9 30 3. In the case of an interest created under the law of
9 31 intestate succession or an interest created by will, other
9 32 than an interest in a testamentary trust, the following shall
9 33 apply:

9 34 a. A disclaimer must be delivered to the personal
9 35 representative of the decedent's estate.

10 1 b. If no personal representative is then serving, a
10 2 disclaimer must be filed with a court having jurisdiction to
10 3 appoint the personal representative.

10 4 4. In the case of an interest in a testamentary trust, one
10 5 of the following shall apply:
10 6 a. A disclaimer must be delivered to the trustee then
10 7 serving, or if no trustee is then serving, to the personal
10 8 representative of the decedent's estate.
10 9 b. If no personal representative is then serving, a
10 10 disclaimer shall be filed with a court having jurisdiction to
10 11 enforce the trust.
10 12 5. In the case of an interest in an inter vivos trust, one
10 13 of the following shall apply:
10 14 a. A disclaimer must be delivered to the trustee then
10 15 serving.
10 16 b. If no trustee is then serving, a disclaimer must be
10 17 filed with a court having jurisdiction to enforce the trust.
10 18 c. If a disclaimer is made before the time the instrument
10 19 creating the trust becomes irrevocable, the disclaimer must be
10 20 delivered to the settlor of a revocable trust or the
10 21 transferor of the interest.
10 22 6. In the case of a disclaimer of an interest created by a
10 23 beneficiary designation made before the time the designation
10 24 becomes irrevocable, the disclaimer must be delivered to the
10 25 person making the beneficiary designation.
10 26 7. In the case of a disclaimer of an interest created by a
10 27 beneficiary designation made after the time the designation
10 28 becomes irrevocable, the disclaimer must be delivered to the
10 29 person obligated to distribute the interest.
10 30 8. In the case of a disclaimer by a surviving holder of
10 31 jointly held property, the disclaimer must be delivered to the
10 32 person to whom the disclaimed interest passes.
10 33 9. In the case of a disclaimer by an object or taker in
10 34 default of an exercise of a power of appointment at any time
10 35 after the power was created, one of the following shall apply:
11 1 a. The disclaimer must be delivered to the holder of the
11 2 power or to the fiduciary acting under the instrument that
11 3 created the power.
11 4 b. If no fiduciary is then serving, the disclaimer must be
11 5 filed with a court having authority to appoint the fiduciary.
11 6 10. In the case of a disclaimer by an appointee of a
11 7 nonfiduciary power of appointment, one of the following shall
11 8 apply:
11 9 a. The disclaimer must be delivered to the holder, the
11 10 personal representative of the holder's estate, or to the
11 11 fiduciary under the instrument that created the power.
11 12 b. If no fiduciary is then serving, the disclaimer must be
11 13 filed with a court having authority to appoint the fiduciary.
11 14 11. In the case of a disclaimer by a fiduciary of a power
11 15 over a trust or estate, the disclaimer must be delivered as
11 16 provided in subsection 3, 4, or 5, as if the power disclaimed
11 17 were an interest in property.
11 18 12. In the case of a disclaimer of a power by an agent,
11 19 the disclaimer must be delivered to the principal or the
11 20 principal's representative.
11 21 13. In addition to the foregoing, all of the following
11 22 shall apply:
11 23 a. A copy of any instrument of disclaimer affecting real
11 24 estate shall be filed in the office of the county recorder of
11 25 the county where the real estate is located. Failure to file,
11 26 record, or register the disclaimer does not affect its
11 27 validity as between the disclaimant and persons to whom the
11 28 property interest or power passes by reason of the disclaimer.
11 29 b. A copy of an instrument of disclaimer, regardless of
11 30 its subject, may be filed with the clerk of court of the
11 31 county in which proceedings for administration have been
11 32 commenced, if applicable.
11 33 Sec. 20. NEW SECTION. 633.704M WHEN DISCLAIMER BARRED OR
11 34 LIMITED.
11 35 1. A disclaimer is barred by a written waiver of the right
12 1 to disclaim.
12 2 2. A disclaimer of an interest in property is barred if
12 3 any of the following events occur before the disclaimer
12 4 becomes effective:
12 5 a. The disclaimant accepts the interest sought to be
12 6 disclaimed.
12 7 b. The disclaimant voluntarily assigns, conveys,
12 8 encumbers, pledges, or transfers the interest sought to be
12 9 disclaimed or contracts to do so.
12 10 c. A judicial sale of the interest sought to be disclaimed
12 11 occurs.
12 12 3. A disclaimer, in whole or part, of the future exercise
12 13 of a power held in a fiduciary capacity is not barred by its
12 14 previous exercise.

12 15 4. A disclaimer, in whole or part, of the future exercise
12 16 of a power not held in a fiduciary capacity is not barred by
12 17 its previous exercise unless the power is exercisable in favor
12 18 of the disclaimant.

12 19 5. A disclaimer is barred or limited if so provided by law
12 20 other than this division.

12 21 6. A disclaimer of a power over property which is barred
12 22 by this section is ineffective. A disclaimer of an interest
12 23 in property which is barred by this section takes effect as a
12 24 transfer of the interest disclaimed to the persons who would
12 25 have taken the interest under this division had the disclaimer
12 26 not been barred.

12 27 Sec. 21. NEW SECTION. 633.704N DIVISION SUPPLEMENTED BY
12 28 OTHER LAW.

12 29 1. Unless displaced by a provision of this division, the
12 30 principles of law and equity supplement this division.

12 31 2. This division does not limit any right of a person to
12 32 waive, release, disclaim, or renounce an interest in or power
12 33 over property under a law other than this division.

12 34 Sec. 22. NEW SECTION. 633.704O MEDICAL ASSISTANCE
12 35 ELIGIBILITY.

13 1 A disclaimer of any property, interest, or right pursuant
13 2 to the provisions of this division constitutes a transfer of
13 3 assets for the purpose of determining eligibility for medical
13 4 assistance under chapter 249A in an amount equal to the value
13 5 of the property, interest, or right disclaimed.

13 6 Sec. 23. NEW SECTION. 633.704P APPLICATION TO EXISTING
13 7 RELATIONSHIP.

13 8 Except as otherwise provided in section 633.704M, an
13 9 interest in or power over property existing on the effective
13 10 date of this Act as to which the time for delivering or filing
13 11 a disclaimer under law superseded by this division has not
13 12 expired may be disclaimed after the effective date of this
13 13 Act.

13 14 Sec. 24. NEW SECTION. 633.704Q SEVERABILITY.

13 15 If any provision of this division or the application
13 16 thereof to any person or circumstance is held invalid, the
13 17 invalidity shall not affect other provisions or application of
13 18 the division which can be given effect without the invalid
13 19 provisions or application, and to this end, the provisions of
13 20 the division are severable.

13 21 Sec. 25. Section 633.1102, subsection 17, Code Supplement
13 22 2003, is amended by adding the following new paragraph:

13 23 NEW PARAGRAPH. m. Burial, funeral, and perpetual care
13 24 trusts.

13 25 Sec. 26. Section 633.1105, Code Supplement 2003, is
13 26 amended to read as follows:

13 27 633.1105 TRUST PROVISIONS CONTROL.

13 28 The ~~provisions terms~~ of a trust shall always control and
13 29 take precedence over any section of this trust code to the
13 30 contrary. If a ~~provision term~~ of the trust ~~instrument~~
13 31 ~~modifies or~~ makes any section of this trust code inapplicable
13 32 to ~~a~~ the trust, the common law shall apply to any issues
13 33 raised by such ~~provision term~~.

13 34 Sec. 27. Section 633.2301, Code 2003, is amended by
13 35 striking the section and inserting in lieu thereof the
14 1 following:

14 2 633.2301 SPENDTHRIFT PROTECTION RECOGNIZED.

14 3 Except as otherwise provided in section 633.2302, all of
14 4 the following provisions shall apply:

14 5 1. A term of a trust providing that the interest of a
14 6 beneficiary is held subject to a "spendthrift trust", or words
14 7 of similar import, is sufficient to restrain both voluntary
14 8 and involuntary transfers of the beneficiary's interest.

14 9 2. a. A creditor or assignee of a beneficiary may reach a
14 10 mandatory distribution of income or principal, including a
14 11 distribution upon termination of the trust, if the trustee has
14 12 not made the distribution to the beneficiary within a
14 13 reasonable time after the required distribution date.

14 14 b. For the purposes of this subsection, "mandatory
14 15 distribution" means a distribution required by the express
14 16 terms of the trust of any of the following:

14 17 (1) All of the income, net income, or principal of the
14 18 trust.

14 19 (2) A fraction or percentage of the income or principal of
14 20 the trust.

14 21 (3) A specific dollar amount from the trust.

14 22 c. A distribution that is subject to a condition shall not
14 23 be considered a mandatory distribution.

14 24 3. If a creditor or assignee of a beneficiary is permitted
14 25 to reach a mandatory distribution under this section, the sole

14 26 remedy of the creditor or assignee shall be to apply to the
14 27 court having jurisdiction of the trust after such reasonable
14 28 period of time has expired for a judgment ordering the trustee
14 29 to pay to the creditor or the assignee a sum of money equal to
14 30 the lesser of the amount of the debt or assignment, or the
14 31 amount of the mandatory distribution described in subsection
14 32 2. No other remedy, including but not limited to, attachment
14 33 or garnishment of any interest in the trust, recovery of court
14 34 costs or attorney fees, or placing a lien of any type on any
14 35 trust property or on the interest of any beneficiary in the
15 1 trust, shall be permitted or ordered by any court. Any
15 2 writing signed by the beneficiary allowing any remedy other
15 3 than payment of the mandatory distribution not made to the
15 4 beneficiary within a reasonable time after the required
15 5 distribution date shall be void and shall not be enforced by
15 6 any court.

15 7 4. A creditor or assignee of a beneficiary of a
15 8 spendthrift trust shall not compel a distribution that is
15 9 subject to the trustee's discretion if any of the following
15 10 apply:

15 11 a. The distribution is expressed in the form of a standard
15 12 of distribution.

15 13 b. The trustee has abused its discretion.

15 14 Sec. 28. Section 633.2302, Code 2003, is amended to read
15 15 as follows:

15 16 633.2302 EXCEPTIONS TO SPENDTHRIFT PROTECTION.

15 17 A term of a trust prohibiting an involuntary transfer of a
15 18 beneficiary's interest shall be invalid as against claims by
15 19 any of the following:

15 20 1. Any creditor of the beneficiary if the beneficiary is
15 21 the settlor.

15 22 2. Any creditor of the beneficiary as to a distribution to
15 23 be made upon an event terminating or partially terminating the
15 24 trust.

15 25 Sec. 29. NEW SECTION. 633.4507 ATTORNEY FEES AND COSTS.

15 26 In a judicial proceeding involving the administration of a
15 27 trust, the court, as justice and equity may require, may award
15 28 costs and expenses, including reasonable attorney fees, to any
15 29 party, to be paid by another party or from the trust that is
15 30 the subject of the controversy.

15 31 Sec. 30. NEW SECTION. 633.4702 DISCRETIONARY LANGUAGE
15 32 PREVAILS OVER OTHER STANDARD.

15 33 In the absence of clear and convincing evidence to the
15 34 contrary, language in a governing instrument granting a
15 35 trustee discretion to make or withhold a distribution shall
16 1 prevail over any language in the governing instrument
16 2 indicating that the beneficiary may have a legally enforceable
16 3 right to distributions or indicating a standard for payments
16 4 or distributions.

16 5 Sec. 31. Section 633.704, Code 2003, is repealed.

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16 8
16 9 _____
16 10 JEFFREY M. LAMBERTI
16 11 President of the Senate

16 12
16 13 _____
16 14 CHRISTOPHER C. RANTS
16 15 Speaker of the House
16 16

16 17 I hereby certify that this bill originated in the Senate and
16 18 is known as Senate File 2167, Eightieth General Assembly.

16 19
16 20
16 21 _____
16 22 MICHAEL E. MARSHALL
16 23 Secretary of the Senate

16 24 Approved _____, 2004

16 25
16 26
16 27 _____
16 28 THOMAS J. VILSACK
16 29 Governor